

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Wang et al
Application No.:	10/797996
Filed:	March 11, 2004
For:	Balloon Structure with PTFE Component
Group Art Unit:	1791

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2Q-7182-US02

Request for Reconsideration of Patent Term Adjustment, 37 C.F.R. § 1.705

The patentee hereby requests reconsideration, under 35 U.S.C. § 154(d), of the Determination of Patent Term Adjustment (PTA) made by the Director as indicated on the issued patent. Applicant requests reconsideration of the PTA Determination because the USPTO failed to properly adjust for the period between the three-year date and the issue date of the patent pursuant to 37 C.F.R. § 1.702(b).

Determination of Patent Term Adjustment

As indicated on the issued patent, the patent term adjustment is 1533 days. Attached is the PAIR record showing the basis for this determination, which is believed to be incorrect.

The above referenced application was filed on March 11, 2004 and so is entitled to the benefit of the current version of 35 U.S.C. § 154. The PTA determination fails to follow the calculation method required by law.

- (1) This request is being timely filed on May 24, 2010. The patent issued on March 23, 2010. Under 37 C.F.R. § 1.705(d), Applicant has two months after the date of issuance of the patent to request reconsideration of the patent term adjustment. May 23, 2010 falls on a Sunday and, under 35 U.S.C. § 21(b), Applicant has until the next succeeding secular or business day to take action

when the period ends on a Sunday. Therefore it is clear that this request for patent adjustment pursuant to 37 C.F.R. §1.702(b) is timely.

- (2) This request is accompanied by the fee set forth in 37 CFR § 1.18(e).
- (3) Statement of the facts involved:
- (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:
- | | |
|----------------------------------------------------------------------------------|---------------|
| USPTO delay days to the issuance of the first Office Action as indicated on PAIR | + 631 |
| Other delay days post-first Office Action as indicated by PAIR | + <u>676</u> |
| Total USPTO delay days as indicated by PAIR | =1307 |
| Applicant's delay days as indicated on PAIR | - 31 |
| Non-overlapping three year days | + <u>432</u> |
| Correct Adjustment | = 1708 |
- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 1533 days fails to properly include all of the USPTO delay days. The USPTO delayed **631** days between the 14 month date (May 11, 2005) and the mailing date of the first Office Action (February 1, 2007), as indicated on PAIR.

The USPTO delayed **676** days between the filing date of the Notice of Appeal (November 16, 2007) and the mailing date of the decision by the Board of Patent Appeals and Interferences (September 21, 2009), as indicated on PAIR.

Applicant had **31** delay days between the three-month deadline for the Response to the Final Office Action (mailed July 16, 2007) and the filing date of the Notice of Appeal (November 16, 2007) as indicated by PAIR.

Applicant notes that the patent term adjustment calculation provided with the Notice of Allowance (which did not include a calculation of the delay for the period between the three-year date and the issue date under 37 C.F.R. §§ 1.702(b) & 1.703(b)) was 1276 days ($631 + 676 - 31 = 1276$). Following the calculation of the delay period between the three-year date and the issue date, PAIR indicates the patent term adjustment to be 1533 days.

However:

There were 1108 days between the three year date (March 11, 2007) and the issue date of the patent (March 23, 2010). Not all of those days are accounted for on PAIR as USPTO delay.

According to 37 C.F.R. § 1.703(b)(4), the period between the filing date of the Notice of Appeal (November 16, 2007) and the mailing date of the decision by the Board of Patent Appeals and Interferences (September 21, 2009) is subtracted from the three-year delay period. In this case, the appellate delay period is 676 days. Applicant notes that, because the appeal was successful, Applicant recoups this period under 37 C.F.R. §§ 1.702(e) & 1.703(e). This is already accounted for on PAIR.

Therefore, Applicant is entitled to an additional **432** non-overlapping days ($1108 - 676 = 432$) beyond the calculation on PAIR to account for the delays between the three year date (March 11, 2007) and the issue date of the patent (March 23, 2010). Thus the total adjustment that should have been shown on the face of the patent 35 U.S.C. § 154(b) is **1708** days ($631 + 676 + (1108 - 676) - 31 = 1708$).

(iii) The patent is not subject to a terminal disclaimer.

(iv)(A) Applicant has included herewith a copy of the print-out from the USPTO's PAIR Patent Term Adjustment page for the above file. Applicant has not verified the USPTO's determination but accepts it for the purposes of this petition.

All items required under 37 C.F.R. § 1.705 having been provided herein,
the Applicant requests that the Patent Term Adjustment be corrected to show an
adjustment of 1708 days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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10/797,996	BALLOON STRUCTURE WITH PTFE COMPONENT	05-24-2010:18:41:20
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/797,996

Filing or 371(c) Date:	03-11-2004	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	03-23-2010	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1533
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
03-23-2010	PTA 36 Months	257	
03-23-2010	Patent Issue Date Used in PTA Calculation		
02-16-2010	Dispatch to FDC	⚡	
02-10-2010	Application Is Considered Ready for Issue	⚡	
02-02-2010	Issue Fee Payment Verified	⚡	
02-02-2010	Issue Fee Payment Received	⚡	
11-02-2009	Mail Notice of Allowance	⚡	
10-29-2009	Document Verification	⚡	
10-29-2009	Notice of Allowance Data Verification Completed	⚡	
10-29-2009	Case Docketed to Examiner in GAU	⚡	
09-21-2009	Mail BPAI Decision on Appeal - Reversed	676	
09-18-2009	BPAI Decision - Examiner Reversed	⚡	
10-08-2008	Docketing Notice Mailed to Appellant	⚡	
10-07-2008	Assignment of Appeal Number	⚡	
08-05-2008	Appeal Awaiting BPAI Docketing	⚡	
07-01-2008	Mail Reply Brief Noted by Examiner	⚡	
06-25-2008	Reply Brief Noted by Examiner	⚡	
06-18-2008	Date Forwarded to Examiner	⚡	
06-17-2008	Reply Brief Filed	⚡	
05-10-2008	Exam. Ans. Review Complete	⚡	
05-08-2008	Examiner's Answer to Appeal Brief	⚡	
03-06-2008	Appeal Brief Review Complete	⚡	
03-06-2008	Date Forwarded to Examiner	⚡	
02-26-2008	Appeal Brief Filed	⚡	
02-05-2008	Notice -- Defective Appeal Brief	⚡	
02-01-2008	Appeal Brief Review Complete	⚡	
02-01-2008	Date Forwarded to Examiner	⚡	
01-16-2008	Defective / Incomplete Appeal Brief Filed	⚡	
01-16-2008	Appeal Brief Filed	⚡	
12-12-2007	Mail Appeals conf. Proceed to BPAI	⚡	
12-10-2007	Pre-Appeals Conference Decision - Proceed to BPAI	⚡	

11-16-2007	Request for Pre-Appeal Conference Filed	🔍	
11-16-2007	Notice of Appeal Filed		31
11-16-2007	Request for Extension of Time - Granted	🔍	
10-05-2007	Case Docketed to Examiner in GAU	🔍	
09-19-2007	Mail Advisory Action (PTOL - 303)	🔍	
09-17-2007	Advisory Action (PTOL-303)	🔍	
09-13-2007	Date Forwarded to Examiner	🔍	
09-12-2007	Amendment after Final Rejection	🔍	
07-16-2007	Mail Final Rejection (PTOL - 326)	🔍	
07-09-2007	Final Rejection		
05-04-2007	Date Forwarded to Examiner		
05-01-2007	Response after Non-Final Action		
02-01-2007	Mail Non-Final Rejection	631	
01-31-2007	Non-Final Rejection	🔍	
08-27-2004	Information Disclosure Statement considered	🔍	
03-11-2004	Information Disclosure Statement considered	🔍	
06-30-2006	Case Docketed to Examiner in GAU	🔍	
05-10-2006	Case Docketed to Examiner in GAU	🔍	
08-27-2004	Reference capture on IDS	🔍	
08-27-2004	Information Disclosure Statement (IDS) Filed	🔍	
08-27-2004	Information Disclosure Statement (IDS) Filed	🔍	
09-03-2004	IFW TSS Processing by Tech Center Complete	🔍	
09-03-2004	Case Docketed to Examiner in GAU	🔍	
03-11-2004	Reference capture on IDS	🔍	
03-11-2004	Information Disclosure Statement (IDS) Filed	🔍	
03-11-2004	Information Disclosure Statement (IDS) Filed	🔍	
03-11-2004	Preliminary Amendment	🔍	
05-27-2004	Application Return from OIPE	🔍	
05-27-2004	Application Return TO OIPE	🔍	
05-27-2004	Application Dispatched from OIPE	🔍	
05-27-2004	Application Is Now Complete	🔍	
04-22-2004	Cleared by L&R (LARS)	🔍	
04-08-2004	Referred to Level 2 (LARS) by OIPE CSR	🔍	
03-29-2004	IFW Scan & PACR Auto Security Review	🔍	
03-11-2004	Initial Exam Team nn	🔍	

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